

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

| | | |
|---|---|---|
| DERRICK A. RANKINE, |) | |
| |) | |
| Plaintiff, |) | Civil Action No. 03-313E |
| |) | |
| V. |) | |
| |) | |
| SUPERINTENDENT RAYMOND J. |) | Judge Sean J. McLaughlin |
| SOBINA; UNIT MANAGER McNELIS; |) | Mag. Judge Susan Paradise Baxter |
| UNIT COUNSELOR HUGHES; C.O. |) | |
| TROJAN; UNIT MANAGER |) | |
| MAILMAN; C.O. HECKMAN; UNIT |) | |
| COUNSELOR HERDMAN; SGT. |) | |
| CASTINA; MEMBERS OF THE PRC; |) | |
| HEARING EXAMINER CROSS; |) | |
| MARY ANN BERTOLINO; LT. |) | |
| STEVE SIMOSKO; C.O. MUNION; |) | |
| C.O. PRITTS; C.O. CHAPLEY; C.O. |) | |
| FEY; C.O. LUKE; C.O. HEISS; C.O. |) | |
| HUBER; C.O. KROMELL; SGT. |) | |
| STAYER; SGT. DELOSH; LT. T. J. |) | |
| WILSON; JOSEPH; MOLLIGAN, |) | |
| |) | |
| Defendants. |) | Electronically Filed. |

**DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE,
MOTION FOR SUMMARY JUDGMENT**

AND NOW, come the defendants, Sobina, McNelis, Hughes, Trojan, Mailman, Heckman, Herdman, Castina, Members of the PRC, Cross, Bertolino, Simosko, Munion, Pritts, Chapley, Fey, Luke, Heiss, Huber, Kromell, Stayer, Delosh, Wilson, Joseph, and Molligan by their attorneys Thomas W. Corbett, Jr., Attorney General, Mariah L. Passarelli, Deputy Attorney General, and Susan J. Forney, Chief Deputy Attorney General, Chief Litigation Section, and respectfully request that the above-captioned case be dismissed, or in the alternative, that summary judgment be granted, in their favor for the following reasons:

1. Plaintiff failed to state a claim upon which relief can be granted pursuant to Fed.R.Civ.P. 12(b)(6).

2. Plaintiff failed to exhaust administrative remedies, as required by the Prison Litigation Reform Act (PLRA), 42 U.S.C. § 1997e(a), and has procedurally defaulted.

3. Plaintiff cannot raise claims pursuant to: 42 U.S.C. §§ 1981 and 1988; 18 U.S.C. §§ 2, 88, 241, 242, and 371; and the Fifth, Sixth, and Thirteenth Amendments.

4. Plaintiff failed to allege actual physical injury, as required by the PLRA, 42 U.S.C. § 1997e(e).

5. The pleadings, depositions, answers to interrogatories, and admissions on file, etc. show that there is no genuine issue as to any material fact, pursuant to Fed.R.Civ.Pro. Rule 56(c), concerning Plaintiff's due process claims.

6. In the alternative, the defendants are entitled to qualified immunity.

7. A brief in support is incorporated by reference.

8. The following documents have been attached hereto:

Exhibit A: Declaration of Tracy Pollock, dated May 12, 2006

Exhibit B: Misconduct Summary for inmate Derrick A. Rankine, EU-5850

Exhibit C: Misconduct number A439377, and associated documents

Exhibit D: Misconduct number A589711, and associated documents

Exhibit E: Misconduct number A625801, and associated documents

Respectfully submitted,

Thomas W. Corbett, Jr.
Attorney General

BY: /s/ Mariah L. Passarelli
MARIAH L. PASSARELLI
Deputy Attorney General
PA I.D. No. 202469

SUSAN J. FORNEY
Chief Deputy Attorney General
Chief Litigation Section

OFFICE OF ATTORNEY GENERAL
6th Floor, Manor Complex
564 Forbes Avenue
Pittsburgh, PA 15219

(412) 565-3579

Date: May 17, 2006

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FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

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| DERRICK A. RANKINE, |) | Civil Action No. 03-313E |
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| V. |) | Judge Sean J. McLaughlin |
| |) | Mag. Judge Susan Paradise Baxter |
| |) | |
| SUPERINTENDENT RAYMOND J. |) | |
| SOBINA, et al. |) | Electronically Filed. |

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the within **Defendants' Motion to Dismiss, or in the Alternative, Motion for Summary Judgment** was electronically filed and served upon the following via first-class mail:

DERRICK A. RANKINE
EU-5850
SCI-Somerset
1600 Walters Mill Road
Somerset, PA 15510-0002

BY: /s/ Mariah L. Passarelli
MARIAH L. PASSARELLI
Deputy Attorney General

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564 Forbes Avenue
Pittsburgh, PA 15219

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